

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter Of)	
)	
Grande Communications)	CC Docket No. 96-45
)	Study Area Code 449015
Petition for Waiver of FCC Rule)	
Section 54.307(c))	

PETITION FOR WAIVER OF FCC RULE SECTION 54.307(c)

Pursuant to the Federal Communication Commission ("FCC") rules at 47 C.F.R. § 1.3, Grande Communications Networks, Inc. ("Grande") hereby respectfully requests waiver of the FCC rule set forth in 47 C.F.R. § 54.307(c), as well as waiver of any other necessary sections of Parts 36 and 54 of the Commission's rules, regarding quarterly line counts necessary for receipt of high-cost universal service support. Specifically, as an eligible telecommunications carrier ("ETC") in the state of Texas, Grande respectfully requests that the FCC direct the Universal Service Administrative Company (the "Administrator") to accept and apply Grande's line-count data submitted for its September 30, 2005 quarterly update. Once the line-count data is accepted and applied, the Administrator should pay high-cost universal support to Grande for the first quarter of 2006 based on the September 30, 2005 line-counts, because Grande did not receive such support due to an absence of line-count data.

I. BACKGROUND

Pursuant to 47 C.F.R. §§ 54.307(c), 54.802(a), and 54.903(a), Grande had a line-count filing deadline for its High Cost Loop Support ("HCL"), Interstate Access Support ("IAS"), and Interstate Common Line Support ("ICLS") on September 30, 2005. Grande forwarded these line-counts to the Administrator via overnight DHL delivery on September 19, 2005. The Administrator confirmed receipt of the portion of the package addressing line-counts relevant to IAS and ICLS. However, the Administrator stated it did not receive the form in the package verifying the line-counts for HCL. As a result, Grande did not receive funding for HCL for the first quarter of 2006 based on the line-counts submitted on September 30, 2005.

Grant of a waiver of 47 C.F.R. § 54.307(c) is necessary to prevent Grande from being adversely affected by not receiving HCL funding based on the lost line-counts due on September

30, 2005. Not granting a waiver would be contrary to the public interest and inequitable given that Grande continued to provide service to qualifying lines during the quarter at issue. Moreover, requiring Grande to forego this deserved HCL support could detrimentally affect its provision of service in the state of Texas.

Please note that Grande's internal procedures are designed to safeguard against missed filing dates. Although Grande maintains it timely submitted its HCL line counts, Grande remains committed to ensuring that it consistently meets its filing deadlines going forward. To that end, Grande has several employees who are specifically responsible for assuring that line count filings are submitted on time. Grande's system of checks and balances minimizes to the greatest extent possible the risk of non-compliance. Moreover, since the institution of an electronic filing system for line counts, Grande has consistently utilized this system. By submitting its information electronically, Grande is able to quickly and efficiently identify and address any errors. Additionally, there is little risk that any portion of its line counts could be misplaced, as occurred in September 2005. *See* Affidavit of Kristene Stark ("Stark Affidavit"), ¶ 8, attached hereto as Exhibit "A."

II. DISCUSSION

Since becoming an ETC on May 22, 2003, Grande has consistently filed its line-counts on a timely basis. *See* Stark Affidavit, ¶ 3. Furthermore, Grande attempted to timely file the HCL line-counts for which Grande currently is seeking a waiver (*i.e.*, those due on September 30, 2005). Grande forwarded these and other line-counts to the Administrator in one envelope via overnight DHL delivery on September 19, 2005, well in advance of the September 30, 2005 deadline. A true and correct copy of the contents of such package is attached hereto as Exhibit "B." *See* Stark Affidavit, ¶ 4. Grande verified the Administrator's receipt of such package on September 20, 2005, which was 10 days prior to the actual filing deadline. A true and correct copy of the DHL Tracking Results Detail is attached hereto as Exhibit "C."

Per Exhibit "B," the package contained several documents describing Grande's line-counts: 1) a cover letter and spreadsheet concerning the IAS line-count;¹ 2) a cover letter and spreadsheet concerning the ICLS line-count;² and 3) a spreadsheet relating to the HCL, LSS, and

¹ Pursuant to 47 C.F.R. § 54.802(a).

² Pursuant to 47 C.F.R. § 54.903(a).

LTS line-counts.³ *See Stark Affidavit*, ¶ 4. Although the Administrator confirmed receipt of the IAS and ICLS line-count data, the Administrator stated it did not receive the HCL, LSS, and LTS line-count form. All of the abovementioned documents were enclosed in the same DHL package forwarded from Grande to the Administrator on September 19, 2005. *See Stark Affidavit*, ¶ 4. Although Grande later received funds based on the line-counts for IAS and ICLS contained in the package, it did not receive any funds for HCL based on the relevant line-counts contained in that same package. *See Stark Affidavit*, ¶ 6.

Grande respectfully submits to the FCC that its HCL line-count data was timely received by the Administrator before the September 30, 2005 deadline, but it appears this line-count data may have subsequently been misplaced. Grande's accounting department became aware of the problem when it did not receive its HCL funds after the first quarter of 2006, and it did receive HCL funds beginning again in the second quarter of 2006. Grande then notified the Administrator of this error, but ultimately it was told that any resubmission of the line-counts would be considered late-filed. Thus, Grande is filing the present Petition for Waiver to ensure the line-count data is accepted by the Administrator in order to obtain its first quarter of 2006 HCL funds relating to the September 30, 2005 filing.⁴ *See Stark Affidavit*, ¶ 7.

Pursuant to 47 C.F.R. § 1.3, the FCC may waive a rule "for good cause shown." Although agency rules are presumed valid,⁵ the "Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest."⁶ Additionally, "the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis."⁷

In this case, there is good cause for waiving the line-count filing deadlines contained in 47 C.F.R. § 54.307(c), as well as elsewhere in Parts 36 and 54 of the FCC rules. The purpose of these rules is to cause carriers who receive high-cost universal service support to submit current data to be used to calculate that support. Grande has been timely in submitting such data since it

³ Pursuant to 47 C.F.R. § 54.307(c).

⁴ Please note that immediately after Grande became aware of the error, it internally notified its former General Counsel, who assumed responsibility for preparing and filing the current Petition for Waiver. This employee subsequently left Grande, and it was discovered that he did not prepare and file such Petition. When this came to Grande's attention, it promptly engaged the present legal counsel to prepare and file this Petition for Waiver.

⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁷ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular Telephone Co.*, 897 F.2d at 1166.

became an ETC in May 2003. Thus, the Administrator had a current record of Grande's line-counts even without the quarterly line-count filing for September 30, 2005. It would have been reasonable for the Administrator to base HCL support on the existing data, and allow Grande to resubmit the lost line-counts. Grande acknowledges the importance of filing line-counts on a timely basis. However, a strict application of the rule caused the Administrator to deny Grande's resubmission of the lost line-counts. Such action was contrary to the underlying intention of the rule and has resulted in adverse effects to Grande. These adverse effects are especially significant because Grande continued to provide service, despite not receiving the HCL funding for the first quarter of 2006. *See Stark Affidavit.* Accordingly, good cause exists for waiver.

Finally, strict compliance with 47 C.F.R. § 54.307(c) would be inconsistent with the public interest because denying Grande its HCL funding could detrimentally affect its provision of service to the state of Texas. The High Cost Program of the Universal Services Fund was created to ensure that consumers in all regions of the Nation have access to and pay rates for telecommunications services that are reasonably comparable to those in urban areas. Grande's participation in this program furthers this goal. However, carriers cannot be expected to make the financial investments to provide service in high cost areas without the assurance of federal universal service support.⁸ Thus, waiver is warranted in the current situation.

III. CONCLUSION

For the reasons set forth above, Grande respectfully requests a waiver of 47 C.F.R. § 54.307(c), as well as waiver of any other necessary sections of Parts 36 and 54 of the Commission's rules, so that the Administrator may accept as timely and apply Grande's quarterly line-count data that was due on September 30, 2005 for purposes of receiving its first quarter of 2006 HCL funds.

⁸ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd. 4257, ¶ 22 (2004), citing *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168, ¶ 13 (2000).

Respectfully submitted,

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ATTORNEYS FOR GRANDE
COMMUNICATIONS NETWORKS, INC.

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In The Matter Of)	
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Petition for Waiver of FCC Rule)	
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AFFIDAVIT OF KRISTENE STARK

STATE OF TEXAS	§	
	§	
COUNTY OF TRAVIS	§	

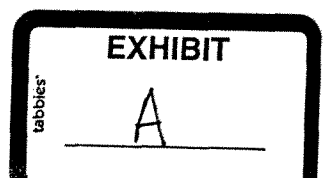
BEFORE ME, the undersigned who is validly-licensed as a notary public pursuant to Texas law, appeared KRISTENE STARK, who is personally known to me, who executed this affidavit in my presence, and upon her oath swore and attested to the truth and accuracy of each of the following statements:

1. "I am over 21 years of age, have never been convicted of a crime of moral turpitude, have personal knowledge of all of the facts stated in this affidavit, all of which are true and correct, and I am competent to give testimony in this matter.

2. "I am a Senior Regulatory Analyst for Grande Communications Networks, Inc. ("Grande"). Grande is an eligible telecommunications carrier ("ETC") in the state of Texas.

3. "Since becoming an ETC on May 22, 2003, Grande has consistently filed its line-counts on a timely basis.

4. "Grande attempted to timely file the HCL line-counts for which Grande currently is seeking a waiver. Grande forwarded these and other line-counts to the Administrator in one envelope via overnight DHL delivery on September 19, 2005, well in advance of the September 30, 2005 deadline. More specifically, the package contained the following documents: 1) a cover letter and spreadsheet concerning the IAS line-count; 2) a cover letter and spreadsheet concerning the



ICLS line-count; and 3) a spreadsheet relating to the HCL, LSS, and LTS line-counts. All of the abovementioned documents were enclosed in the same DHL package forwarded from Grande to the Administrator on September 19, 2005.


5. "A true and correct copy of the contents of the package is attached to Grande's Petition for Waiver as Exhibit "B."

6. "Grande received funds based on the line-counts for IAS and ICLS contained in the package, but it did not receive any funds for HCL based on the relevant line-counts contained in that same package.

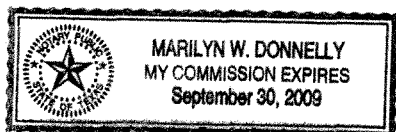
7. "Grande notified the Administrator of this error, but it was told that any resubmission of the line-counts would be considered late-filed. Grande is filing the present Petition for Waiver to ensure the line-count data is accepted by the Administrator in order to obtain its first quarter of 2006 HCL funds relating to the September 30, 2005 filing.

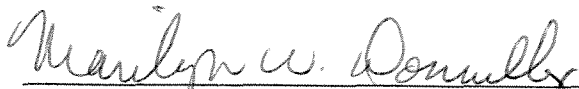
8. "Grande's internal procedures are designed to safeguard against missed filing dates. Grande is committed to ensuring that it consistently meets its filing deadlines. To that end, Grande has several employees who are specifically responsible for assuring that line count filings are submitted on time. Grande's system of checks and balances minimizes to the greatest extent possible the risk of non-compliance. Also, since the institution of an electronic filing system for line counts, Grande has consistently utilized this system."

FURTHER AFFIANT SAYETH NOT.


KRISTENE STARK

SWORN TO AND SUBSCRIBED TO BEFORE ME UNDER OATH, the undersigned authority, this 30th day of January, 2007.




Notary Public in and for the State of Texas



September 18, 2005

VIA AIRBORNE EXPRESS

USAC
444 Hoes Lane
RRC 4A1060
Piscataway, NJ 08854
Telephone: (877) 877-4925

RE: Interstate Access Support Line Count *Grande Communications Networks, Inc.*

Dear Madam or Sir:

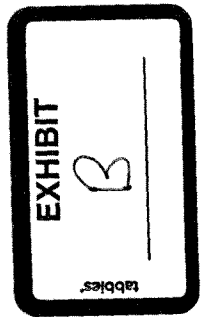
Enclosed for filing with the Universal Service Administrative Company, please find the above-referenced report for *Grande Communications Networks, Inc.* for access line counts due September 30, 2005 for the period ending June 30, 2005.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Kristene Stark
Sr. Regulatory Analyst

enclosure



Date: 24-Jun-05

CETC Name: Grande Communications Networks, Inc.

CETC Study Area Code (SAC): 449015

Contact Name: Kristene Stark

Contact Telephone Number: 512.878.5424

Lines Reported As Of: 30-Jun-05

Areas are Eligible for Support/Ineligible for Support (select one): Eligible for Support

[illegible]



September 18, 2005

VIA AIRBORNE EXPRESS

USAC
444 Hoes Lane
RRC 4A1060
Piscataway, NJ 08854
Telephone: (877) 877-4925

Re: Completed FCC Form 507 - Interstate Common Line Support
Mechanism Line Count Report for *Grande Communications Networks, Inc.*

Dear Madam or Sir:

Enclosed for filing with the Universal Service Administrative Company, please find the above-referenced Form 507 for *Grande Communications Networks, Inc.* for access line counts due September 30, 2005 the period ending March 30, 2005.

Sincerely,

Kristene Stark
Regulatory Analyst

enclosures

FCC Form 507
Interstate Common Line Support Mechanism
Line Count Report

FCC Form 507
OMB Control No. 3060-0972
Expiration Date: 9/30/2002

LINE COUNT DATA COLLECTION FOR PATH 1 CARRIERS				
Block 1 - Contact Information				
ROW #	DATA ELEMENT	FORMAT OF REQUESTED DATA	RESPONSE	NO. OF ACQUIRED LINES
1	Carrier Study Area Code	6 numeric digits	442140	
2	Carrier Study Area Name	alpha characters	San Marcos, Texas	
3	Service Provider Identification Number	9 numeric digits	143002452	
4	Data As Of	mm/dd/yyyy	03/302005	
5	Disaggregation Path Selected by Incumbent Carrier	Identify Path 1	1	
6	Contact Name	alpha characters	Kristene Stark	
7	Contact Telephone Number (including area code)	10 numeric digits	512.878.5424	
Block 2 - Line Counts				
8	Residential and Single-Line Business Access Lines in Service	numeric digits	3716	
9	Multi-Line Business Access Lines in Service	numeric digits	310	
10	Total Number of Access Lines in Service in Study Area	numeric digits	4026	
11	Name of Carrier From Which Lines Were Acquired, If Applicable	alpha characters		
12	Study Area Code From Which Lines Were Acquired, If Applicable	6 numeric digits		

PATH 1 LINE COUNT REPORT

Revised November 2004

FCC Form 507
Interstate Common Line Support Mechanism
Line Count Report

FCC Form 507
OMB Control No. 3060-0972
Expiration Date: 9/30/2002

TO BE COMPLETED BY THE REPORTING CARRIER, IF THE REPORTING CARRIER IS FILING FCC FORM 507 ON ITS OWN BEHALF:

Certification of Officer or Employee as to the Accuracy of the Data Reported in FCC Form 507, Line Count Report for Interstate Common Line Support Mechanism, on Behalf of Reporting Carrier			
I certify that I am an officer or employee of the reporting carrier; my responsibilities include ensuring the accuracy of the actual line count data reported on FCC Form 507; and, to the best of my knowledge, the information reported on this form is accurate.			
Name of Reporting Carrier: Grande Communications Networks, Inc.			
Signature of authorized officer or employee: <i>Andy Sarwal</i>		Date: 9/19/05	
Printed name of authorized officer or employee: Andy Sarwal			
Title or position of authorized officer or employee: Sr. Vice President, General Counsel and Secretary			
Telephone number of authorized officer or employee: (512) 878-5424			
Study Area Code of Reporting Carrier: 449015		Filing Due Date for this form (mm/dd/yyyy): 9/30/2005	
Persons willfully making false statements on this form can be punished by fine or forfeiture under the Communications Act of 1934, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001.			

High Cost Loop, Local Switching Support, and Long Term Support Line
Count

Date: September 18, 2005

CETC Name: Grande Communications Networks, Inc.
CETC Study Area Code (SAC): 449015
Contact Name: Kristene Stark
Contact Telephone Number: (512) 878-5424
Lines Reported As Of: March 2005
Areas are Eligible for Support/Ineligible for Support (select one):

Incumbent Carrier Name	Incumbent Carrier SAC	Incumbent Disaggregation Path Selection (1,2 or 3)	Disaggregation Zone Name (if applicable)	Total Number of Lines in Service
CenturyTel of San Marcos	442140	1	N/A	4026

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SENDER'S RECEIPT

Airbill#: 27907337651
To(Company):
USAC
444 Hoes Lane
RRC 4A1060
Piscataway, NJ 08854
United States
Attention To: Form 507-ICLS - Line Count Report
Phone#: 877 877-4925
Sent By: Kristene Stark
Phone#: 512-878-4000

Rate Estimate: 14.93
Protection: None Required Amount: \$0
Description:
Weight: Letter
Dimensions: 0 X 0 X 0
Ship Ref: 200101.69800
Service Level: Express
(Next business day by 12 PM)
Special Service:
COD Amount: \$0.00
Payment Options:
Date Printed: 2005-09-19
Bill Shipment To: Sender
Bill To Account: 128774975
Ship Date: 2005-09-19

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Time _____

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- ▶ Track by reference
- ▶ Get delivery signature
- ▶ Track DHL Same Day service

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Log in

▶ Forgot your Password?

Track results detail

Tracking results detail for 27907337651

Tracking summary

Current Status ☒ **Shipment delivered.** [View Signature](#)

Delivered on 9/20/2005 10:50 am

Delivered to Shipping Dock

Signed for by **M DIXON** [What is this?](#)

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Date and Time	Status	Location
9/20/2005 10:50 am	Shipment delivered.	South Plainfield, NJ
8:27 am	Arrived at DHL facility.	South Plainfield, NJ
3:20 am	Transit through sort facility.	Wilmington, OH
9/19/2005 5:19 pm	Departing origin.	Austin, TX
4:30 pm	Picked Up by DHL.	Shipper's Door

Ship From: GRANDE COMM San Marcos, TX 78666 United States	Ship To: USAC Piscataway, NJ 08854 United States	Shipment Information: Ship date: 9/19/2005 Pieces: 1 Total weight: 1 lb Ship Type: Letter Exp
Attention: GRANDE COMM	Attention: USAC	Shipment Reference: Service: Next Day Special Service: Description:

Tracking detail provided by DHL: 9/27/2005, 12:52:05 pm pt.

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